SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58522; File No. SR-NYSE-2008-83)

September 11, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Resume the Operation of NYSE Rule 123D(3) with Respect to Trading in the Securities of Fannie Mae and Freddie Mac Beginning on September 11, 2008, Following the Suspension of That Rule Pursuant to SR-NYSE-2008-81

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on September 11, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to resume the operation of NYSE Rule 123D(3) with respect to trading in the securities of Fannie Mae and Freddie Mac beginning on September 11, 2008, following the suspension of that rule pursuant to SR-NYSE-2008-81.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 C.F.R. 40.19b-4.

4 See Securities Exchange Act Release No. 58488 (September 8, 2008). For a complete list of the securities affected by this filing, see SR-NYSE-2008-81.

places specified in Item IV below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Regulation NMS, adopted by the Securities and Exchange Commission ("SEC") in April 2005,[5] provides that each trading center intending to qualify for trade-through protection under Regulation NMS Rule 611[6] is required to have a Regulation NMS-compliant trading system fully operational by March 5, 2007 (the "Trading Phase Date").[7]

For stocks priced below $1.00 per share, Regulation NMS Rule 612[8] permits markets to accept bids, offers, orders and indications of interest in increments smaller than a $0.01, but not less than $0.0001, and to quote and trade such stocks in sub-pennies. Markets may choose not to accept such bids, offers, orders or indications of interest and the NYSE has done so, maintaining a minimum trading and quoting variation of $0.01 for all securities trading below $100,000. See NYSE Rule 62.

The SEC's interpretation of Rule 612 requires a market that routes an order to another market in compliance with Rule 611 and receives a sub-penny execution, to accept the sub-penny execution, report that execution to the customer, and compare, clear and settle that trade. The SEC, however, provided a limited exemption to Rule 611's proscription against trade-

5 See Securities Exchange Act Release No. 51808 (June 9, 2005), 17 CFR Parts 200, 201, 230, 240, 242, 249 and 270.

6 See 17 C.F.R. § 242.611.

7 See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007) (S7-10-04).

8 See 17 C.F.R. § 242.612. Rule 612 originally was to become effective on August 29, 2005, but the date was later extended to January 29, 2006. See Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

throughs to protected quotes that include a sub-penny component to such quotes that are better-priced by a minimum of $0.01.[9]

In March, 2007, the Exchange amended Rule 123D to provide for a "Sub-penny trading" condition because the Exchange's trading systems did not then accommodate sub-penny executions on orders routed to better-priced protected quotations, nor could it recognize a quote disseminated by another market center if such quote had a sub-penny component and, therefore, could have inadvertently traded through better protected quotations. The amended rule automatically halts trading on the Exchange in a security whose price was about to fall below $1.00, without delisting the security, so that the security could continue to trade on other markets that deal in bids, offers, orders or indications of interest in sub-penny prices, until the price of the security had recovered sufficiently to permit the Exchange to resume trading in minimum increments of no less than one penny or the issuer is delisted for failing to correct the price condition within the time provided under NYSE rules.[10] A subsequent amendment established that any orders received by the NYSE in a security subject to a "Sub-penny trading" condition would be routed to NYSE Arca, Inc. and handled in accordance with the rules governing that market.[11]

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9 Order Granting National Securities Exchanges a Limited Exemption from Rule 612 of Regulation NMS under the Securities Exchange Act of 1934 to Permit Acceptance by Exchanges of Certain Sub-Penny Orders. See Securities and Exchange Commission Release No. 54714 (November 6, 2006).

10 See Securities and Exchange Commission Release No. 34-55398; File No. SR-NYSE-2007-25 (Mar. 5, 2007).

11 See Securities and Exchange Commission Release No. 34-55537; File No. SR-NYSE-2007-30 (Mar. 27, 2007).